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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/380,932	01/18/2000	GREG FIRTH	28911/35930	3270

7590 02/12/2004

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EXAMINER
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LACOURCIERE, KAREN A

ART UNIT	PAPER NUMBER
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1635

DATE MAILED: 02/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action****Application No.**

09/380,932

**Applicant(s)**

FIRTH, GREG

**Examiner**

Karen A. Lacourciere

**Art Unit**

1635

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☒ The proposed amendment(s) will not be entered because:  
(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ they raise the issue of new matter (see Note below);  
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☒ Applicant's reply <sup>has not overcome</sup> ~~has~~ overcome the following rejection(s): See Continuation Sheet.  
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.


8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.  
10. ☐ Other: \_\_\_\_\_

Karen A. Lacourciere

Continuation of 2. NOTE: The proposed amendment to claim 19 adds an additional step to the claims method, which would require a further search and considerations. The proposed amendment which cancels claim 17 introduces new considerations under 35 USC 112, second paragraph, because claim 19 would depend on a canceled claim .

Continuation of 3. Applicant's reply has overcome the following rejection(s): If entered, Applicant's reply would overcome the rejection of claims 19 and 20 under 35 USC 112, second paragraph and the rejections of record of claims 11, 12, 14, 21 and 27 which are canceled.

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's arguments are directed to the claims as amended, however the proposed claim amendments have not been entered. Applicant argues that the amendments to claim 16 incorporate all of the limitations of claim 17, which was objected to as dependent on a rejected claim, and therefore claim 16 and claims depending therefrom are allowable. This has not been found to be persuasive because the amendments to claim 16 do not incorporate all of the limitations of prior claim 17, specifically, claim 17 included closed language, (the word "is" in line two of claim 17) whereas claim 16, as amended, remains open, using the term "consists essentially of", and does not overcome the rejection of record .

  
KAREN A. LACOURCIERE, PH.D  
PRIMARY EXAMINER